S.B. CIVIL MISC. APPEAL NO.1219/2007.
(Smt. Rekha & Anr. Vs. Pancham Ooike & Ors.)
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S.B. CIVIL MISC. APPEAL NO.1122/2007.
(Goverdhan Lal & Anr. Vs. Pancham Oike & Ors.)
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Date of Order :: 3rd September 2007.

HON'BLE MR. JUSTICE DINESH MAEHSHWARI

Mr. Manish Pitaliya, for the appellants in CMA No.1219/2007.
Mr. Manoj Pareek, for the appellants in CMA No.1122/2007.
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These two appeals against the same award dated 05.10.2006 made by the Motor Accidents Claims Tribunal, Chittorgarh in Claim Case No.160/2003 preferred respectively by the vehicular accident victim's wife and daughter (CMA No.1219/2007) and by his parents (CMA No.1122/2007) have been heard together; and are taken up for disposal by this common order.

Briefly put, the relevant background facts are that the accident in question occurred on 29.10.2002 at about 4:30 a.m. on Nagpur-Bhopal road near village Umreek when a car bearing registration No. MH31 AH 4641 was hit by a truck bearing registration No. MP10 A 2468; and the victim Rakesh Kumar (about 30 years), an occupant of the car, sustained injuries and succumbed on the spot.

The parents of the victim (appellants of CMA No.1122/2007) filed the claim application on 13.02.2003 before the Motor Accidents Claims Tribunal, Chittorgarh and while narrating the incident, claimed compensation against the driver, owners, and insurer of the truck aforesaid with the submissions that they were deprived of the services of their son and support base in their old age. The claimants sought compensation in the sum of Rs.1,12,50,000/- while stating the age of the victim at 25 years, his earning at Rs.12,000/- per month as a marketing manager and salesman; and claiming loss of his contribution to them at Rs.10,000/- per month for 45 years, loss of future prospects and enhancement at another Rs.12,000/- per month, and general damages at Rs.4,50,000/-. While joining the wife and daughter of the victim (appellants of CMA No.1219/2007) as non-applicants Nos. 5 and 6 the claimants stated themselves to be the legal representatives of the deceased and alleged that his wife and daughter were residing separate at Bhilwara but were joined as non-applicants in order to avoid any legal dispute.

On behalf of the non-applicants Nos.5 and 6, wife and minor daughter of the victim, it was stated in relation to the averments of the claim application that the date of birth of victim was 05.05.1972 and his age had wrongly been stated at 25 years; that the claimants have not stated the name and

address of the employer of the victim who was working with M/s. Commercial Sales Corporation, Fanwara Chowk, Gandhi Bag, Nagpur; and that the victim was getting salary at Rs.10,000/- per month and had substantial future prospects. The said non-applicants further asserted that they alone were the dependents of the deceased; that the non-applicant No.5 has suffered loss of consortium and the non-applicant No.6 was deprived of paternal comfort and guidance. It was also alleged that the claimants had other issues viz., two sons, one elder and another younger to the victim, and one daughter; that the deceased was not living with the claimants since his childhood and his maternal uncle brought him up; and that the claimants did not participate even in his marriage ceremony. The said non-applicants, therefore, asserted that the claimants were not the dependents of the victim and were not entitled for any compensation.

The insurer of the vehicle involved in accident, while stating general denial of the claim averments, and taking defence for its exoneration alleged that the truck driver was not holding valid driving licence; and further asserted that the persons related with the car were not made parties and hence the claim application was required to be rejected for non-joinder of necessary parties. The insurer also made a cursory averment that the wife of the deceased Smt. Rekha had

already lodged a claim at Nagpur and, therefore, this claim application was not competent.

In view of the averments of the parties, the Tribunal framed the following issues for determination of the questions involved in the case:-

(1) आया दिनांक 29/10/02 को करीब 4:30 A.M. पर सरहद मौजा उमरीक में अप्रार्थी सं. 1 ने अप्रार्थीगण सं. 2 और 3 के स्वामित्व के ट्रक सं. M.P. 10/A - 2468 को तेज गति और उपेक्षापूर्वक चलाकर कार सं. MH 31/A.H. 4641 के टक्कर मारी जिससे कार में बैठे राकेश कुमार की मृत्यु हुई ?

..... प्रार्थीगण

(2) आया दुर्घटना कार चालक की लापरवाही एवं कार को तेज गति से चलाने के कारण घटित हुई ?

..... अप्रार्थी बीमा क No.4

(3) आया अप्रार्थी सं. 1 के पास ट्रक चलाने का वैध एवं प्रभावी अनुज्ञापत्र नहीं था, जिसका क्या प्रभाव ?

..... अप्रार्थी सं.4

(4) आया कार चालक, मालिक एवं कार की बीमा क0 को पक्षकार बनाये बगैर यह क्लेम चलने योग्य नहीं है ?

..... अप्रार्थी सं.4

(5) आया मृतक की विधवा एवं उसकी बेटी अप्रार्थीगण सं. 5 और 6 ने नागपुर में क्लेम पेश किया है इसलिये यह क्लेम चलने योग्य नहीं है ?

..... अप्रार्थी सं. 4

(6) आया प्रार्थीगण मृतक की आय पर आश्रीत नहीं होने के कारण प्रतिकर प्राप्त करने के अधिकारी नहीं है ?

..... अप्रार्थीगण सं. 5 & 6

(7) आया प्रार्थीगण/अप्रार्थी सं. 5-6 कितना प्रतिकर एवं ब्याज प्राप्त करने के अधिकारी हैं ?

(8) अनुतोष क्या है ?"

In evidence, the claimants examined AW-1 Goverdhan Lal (father of the deceased), AW-2 Smt. Rekha (wife of the deceased), and AW-3 G.S. Bhootra (said to be the Finance Manager with the employer of the deceased); and produced relevant documentary evidence Ex.1 to Ex.15. The insurance company, though did not lead any oral evidence, got exhibited the documents Ex. A/1 to Ex.A/3.

After considering the evidence on record, the Tribunal found in issues Nos. 1 and 2 that the accident occurred for rash and negligent driving of the said truck; and decided issues Nos. 3 and 4 against the insurer for want of relevant evidence. The Tribunal further decided issue No.5 against the insurance company after noticing that nothing was shown about any alleged claim lodged at Nagpur whereas AW-2 Smt. Rekha categorically stated that she had not made any claim at any other place.

Taking up issue No.6 for consideration, the Tribunal observed that the claimants were the parents of the deceased and even if self-dependent, they were entitled to compensation in relation to loss of estate and loss of services of their son

and the mental agony suffered.

Taking up quantification of compensation in issue No.7, the Tribunal referred to the documentary evidence available on record including the tax returns and income statements of the victim and found that his gross salary in the financial year 2001-2002 was shown at Rs.1,06,000/-; but then, Rs.30,000/- were deducted towards conveyance allowance and Rs.2,100/- towards professional tax; and, therefore, estimated his net annual income at Rs. 73,900/- i.e., about Rs.6,200/- per month. The Tribunal further referred to the tax return and computation of income for the financial year 2000-2001 (Ex.14) showing gross salary at Rs.89,000/- and observed that deducting Rs.2,100/- wherefrom, the amount comes to Rs. 86,900/- i.e., about Rs.7,200/- per month. The Tribunal also referred to the tax return of the victim filed by his wife on 14.08.2003 (Ex.13) wherein his income was shown at Rs.45,440/- being from the salary for seven months i.e., about Rs.6,500/- per month.

The Tribunal observed that the income of the victim was around Rs.6,200/- to Rs.7,200/- per month; and looking to his age at 30 years and considering the fact that he was serving in a private firm and there had been some enhancement in his income, the Tribunal put an estimate on his monthly income at Rs.7,500/- per month and deducting one-third wherefrom, took

loss of contribution at Rs.5,000/- per month i.e., Rs.60,000/- per annum; and proceeded to capitalise with application of multiplier of 17 with reference to Second Schedule to the Motor Vehicles Act; and, thus, assessed pecuniary loss at Rs.10,20,000/- (60,000 x 17). The Tribunal allowed Rs.20,000/- to the wife of the deceased towards loss of consortium; Rs.10,000/- to the daughter towards loss of love, affection and guidance of her father; and Rs.10,000/- each to the mother and father of the deceased for loss of services of their son. The Tribunal further allowed Rs.2,000/- towards funeral expenses; Rs.3,000/- towards loss of estate; and another Rs.5,000/- towards transportation. In this manner, the Tribunal made the award of compensation in the sum of Rs.10,80,000/- and allowed interest @ 6% per annum.

The Tribunal proceeded to order apportionment of the remaining award amount after adjustment of the amount of Rs. 50,000/- received under No Fault Liability in the manner that the claimants–parents shall be allowed Rs.1,00,000/-; the daughter of the deceased shall be entitled for Rs.2,00,000/-; and the remaining Rs. 7,30,000/- with entire interest on the award amount shall be received by the wife of the deceased.

The appellants have preferred these appeals seeking enhancement over the amount awarded by the Tribunal. The parents of the deceased further seek to question the

apportionment made by the Tribunal with the submissions that the amount allowed to them at Rs.1,00,000/- remains too low and inadequate.

It has been contended that the victim was earning about Rs.10,000/- per month as asserted by his wife and as proved by the witness AW-3; and that the tax return for the financial year 2001-2002 shows his annual income at Rs.1,06,000/-; and then, he was younger in age and there had been regular growth of income showing substantial future prospects. Therefore, according to the appellants, the Tribunal has been in error in taking average income of the deceased only at Rs.7,500/- per month.

So far the quantum of compensation is concerned, having examined the matter in its totality, this Court is clearly of opinion that the amount allowed by the Tribunal in this case is on the higher side and rules out any scope for enhancement. The deceased was not in any settled job or employment nor has been shown possessing any such qualification as to consider reasonable chances of future enhancement. The aspect of future prospects cannot be employed in the present case with reasonable certainty. Moreover, the fact remains that in this case the Tribunal has taken a very liberal view of the matter and has taken monthly income of the victim at Rs.7,500/-, even beyond his last known

income; and then, despite taking multiplicand at Rs.60,000/-, has yet chosen to apply multiplier of 17 with reference to the Second Schedule to the Act, though the said Schedule provides multiplier in relation to the annual income maximum at Rs.40,000/-. The Tribunal has further liberally allowed Rs.50,000/- towards non-pecuniary loss and yet another Rs.10,000/- towards other losses. In the ultimate analysis, the amount of compensation as awarded by the Tribunal in this case at Rs.10,80,000/- could only be said to be rather on the higher side; and rules out any scope for enhancement.

So far apportionment of the award amount is concerned, in the facts and circumstances of this case, the Tribunal cannot be said to have erred in allowing about 10% of the award amount to the parents of the victim; and the claimants parents do not appear entitled for any further amount. From the averments of the parties and the evidence adduced on record, it appears that the deceased was not residing with the claimants–parents and the claimant-father has admitted the fact that he did not participate in the marriage of the victim solemnized at Bhilwara, allegedly for indisposition. In the claim application, even the age of the victim has been stated incorrectly at 25 years though he was above 30 years of age; and source of his income has also not been stated correctly. Then, the victim had two brothers, one elder and another

younger; and the claimant-father is shown to be earning separately. In the overall circumstances, it appears that the substantial part of dependency had only been of the wife and minor child of the victim and, therefore, the amount apportioned for the parents at Rs.1,00,000/- cannot be said to be inappropriate.

As a result of the discussion aforesaid, these appeals deserve to be dismissed. However, having examined the award in its totality, this Court is of opinion that the apportionment of the award amount as ordered by the Tribunal *inter se* the wife and the daughter of the victim cannot be said to be just and proper, and deserves modification; and for this purpose, no notices are required to be issued to the other non-applicants.

The Tribunal has chosen to apportion only an amount of Rs.2,00,000/- for about 2½ years old daughter of the deceased and has allowed remaining Rs.7,30,000 with entire interest on the award amount to his wife (about 29½ years in age). In the circumstances of the case, this Court is of opinion that an amount of Rs.4,00,000/- deserves to be awarded to the daughter of the deceased; and instead of Rs.7,30,000/-, the wife of the deceased may be awarded principal amount Rs.5,30,000/-.

Therefore, while dismissing these appeals, the apportionment of the award amount between the wife and the daughter of the deceased is modified in the manner that the non-applicant No.6, Kumari Meetali (daughter of the deceased) shall be entitled to an amount of Rs.4,00,000/-; and the non-applicant No.5, Smt. Rekha (wife of the deceased) shall be entitled to an amount of Rs.5,30,000/- together with interest on the entire award amount.

It is noticed that the Tribunal has ordered the amount of Rs.7,00,000/- to be placed in fixed deposit for 10 years in the name of the wife of the deceased. Out of such deposit, Rs.2,00,000/- shall be taken out and shall be placed in an appropriate term deposit in the name of the non-applicant No.6 Kumari Meetali, till her attaining majority. The Tribunal shall issue necessary directions for carrying out requisite modification.

The appeals are dismissed subject to the modification of the award as aforesaid.

(DINESH MAHESHWARI), J.

Mohan/

S.B. CIVIL MISC. APPEAL NO.1122/2007.
(Goverdhan Lal & Anr. Vs. Pancham Oike & Ors.)

Date of Order :: 3rd September 2007.

HON'BLE MR. JUSTICE DINESH MAEHSHWARI

Mr. Manoj Pareek, for the appellants.

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Vide order made in S.B. Civil Misc. Appeal No.1219/2007 (Smt. Rekha & Anr. Vs. Pancham Ooike & Ors.).

(DINESH MAHESHWARI), J.

Mohan/